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February 11, 2008

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: April 17, 2007

Case Number: TSO-0486

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance) under the provisions of 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. For the reasons discussed below, I have determined that the individual's access authorization should not be restored at this time.

**I. Background**

The individual has held a Department of Energy (DOE) access authorization for many years. During a routine background reinvestigation, the local DOE security office (LSO) obtained derogatory information concerning the individual's financial practices that created a substantial doubt about her eligibility for an access authorization. The LSO conducted a Personnel Security Interview (PSI) with the individual. Because the security concerns remained unresolved after the PSI, the LSO proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. See 10 C.F.R. § 710.21. That letter informed the individual that her access authorization had been suspended on the basis of information that created a substantial doubt concerning her eligibility for access authorization. The Notification Letter included a statement of that derogatory information and explained how that information fell within the purview of one potentially disqualifying criterion, Criterion L, which is set forth at 10 C.F.R. § 710.8(l).<sup>1</sup> The letter further informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for access authorization. The individual requested a hearing, and the LSO forwarded the individual's request to the Office of

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<sup>1</sup> Criterion L relates, in relevant part, to information that a person has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or undue duress which may cause the individual to act contrary to the best interests of national security . . ." 10 C.F.R. § 710.8(l). Such conduct or circumstances for purposes of Criterion L include, but are not limited to, a pattern of financial irresponsibility.

Hearings and Appeals (OHA). The Acting Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual and her supervisor. The DOE submitted 15 exhibits before the hearing, and the individual submitted a total of seven exhibits before and during the hearing. The transcript of the hearing will be hereinafter cited as “Tr.” I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual’s eligibility to hold a DOE access authorization as well as the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concerns in this case remain unresolved.

## **II. Standard of Review**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. The Hearing Officer’s role in this proceeding is to evaluate the evidence concerning the individual’s eligibility for access authorization presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual’s access authorization eligibility shall be resolved in favor of national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of the individual’s participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and evidence presented by both sides in this case.

## **III. Findings of Fact**

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual’s eligibility for access authorization. In the Notification Letter, the LSO characterized this information as indicating that the individual’s mishandling of her financial affairs had raised concerns about her honesty and reliability. DOE Ex. 1. Except as discussed below, the individual does not contest the facts that the LSO considers to be derogatory information.

The individual was divorced in the mid-1980s. Tr. at 11. Following the divorce, the individual faced filing her income tax return for the first time. *Id.* at 13. She found the process daunting, in part because her ex-husband was uncooperative, and did not file her income tax return for that year. *Id.* at 11. She did not file her return the next year either, because she had not resolved the matters that had prevented her from filing for the previous year, and the process of filing taxes

overwhelmed her. *Id.* at 10, 12. As the years passed, she procrastinated further, seeing the obstacles to filing several years' worth of returns as insurmountable. *Id.* at 13. In 1993, the LSO conducted a personnel security interview with the individual, in which the interviewer made her aware that her failure to file her tax returns was a matter of concern, and the individual committed to resolving her overdue tax obligations by January 1994. DOE Ex. 6 at 15. During her reinvestigation in 2006, the individual informed the LSO that she had been subject to a garnishment in 2000 for failure to pay her taxes from the mid-1980s through 2000. DOE Ex. 3 at 9-16. At the same time, the individual's credit report indicated that she was delinquent on a number of accounts; when confronted with these debts, the individual committed to repaying them immediately. DOE Ex. 4.

#### **A. Derogatory Information Concerning the Individual's Reliability**

In the Notification Letter, the LSO identified two discrete sets of facts as derogatory information about the individual's reliability. During a PSI held in 1993, the individual admitted that she had not filed her federal income tax returns for the years 1985 through 1992. At that time, she acknowledged that she needed to file those returns "within the next month," and committed to filing her 1993 tax return in January 1994. DOE Ex. 6 at 15. At her 2006 PSI, however, the individual divulged that the Internal Revenue Service had garnished her wages in 2000 for failure to file her tax returns. DOE Ex. 3 at 11-13. Although she could not clearly state precisely which years of non-filing formed the basis for the IRS's garnishment, she believed it concerned a period of 13 years, up to and including 2000. *Id.* at 11.

The second set of facts that raised a reliability concern is more recent in origin. A May 2005 credit report revealed that the individual had four accounts on which she was delinquent. The LSO inquired into those accounts with a Letter of Interrogatory (LOI). In her May 29, 2006 response to the LOI, the individual committed to resolving these delinquencies, either by paying off the amounts owed or by determining what the charges were and paying them if she owed them. DOE Ex. 4. Nevertheless, at the time of her September 2006 PSI, she conceded that she had not yet taken any action to clear her record of these debts. DOE Ex. 3 at 41.

#### **B. Derogatory Information Concerning the Individual's Honesty**

The Notification Letter also described two circumstances that the LSO considered derogatory with respect to the individual's honesty. The first is the LSO's contention that she provided the office with inconsistent information regarding the status of her federal and state tax obligations. In her response to a question of the LOI about the status of her federal and state taxes, the individual stated, "I have caught up with all my back years . . ." DOE Ex. 4. During the PSI conducted on September 27, 2006, however, the individual revealed that she still had not filed state tax returns for several years. DOE Ex. 3 at 24, 26-27.

The LSO's second concern for the individual's honesty arose when it received conflicting information concerning a garnishment. When completing a Questionnaire for National Security Positions (QNSP) in April of 2005, the individual checked a "No" response to the question, "In the past 7 years, have you had your wages garnished . . . ?" DOE Ex. 5, Question 27b. In her response to the LOI that requested "any information that may help explain the reasons for any financial difficulties," however, the individual revealed that the Internal Revenue Service had placed "a garnishment on my income." DOE Ex. 4. During the PSI conducted on September 27,

2006, the individual explained that she had made her response without thinking, and did not intend to deceive the LSO. DOE Ex. 3 at 52.

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

### **A. Derogatory Information and Associated Security Concerns**

In the Notification Letter, the LSO cites Criterion L as the basis for its concerns about the individual's eligibility for an access authorization. The derogatory information that raised the concerns relate to the individual's mismanagement of her financial responsibilities, including her failure to file federal and state income tax returns for several years and her failure to repay four debts that dated back to 2000.

The derogatory information in this case is somewhat unusual. Individuals often accrue debts over long periods and present a history of failing to repay them. Once such a pattern of financial irresponsibility has been established, an individual must demonstrate a new pattern of financial responsibility in order to mitigate or resolve the security concerns raised by the established pattern of financial irresponsibility. *Personnel Security Hearing (Case No. TSO-0170)*, 29 DOE ¶ 82,811 (2006); *Personnel Security Hearing (Case No. TSO-0108)*, 26 DOE ¶ 82,764 at 85,699 (1996). In the present case, however, the individual's debts arose during a relatively short period several years ago, when her wages were garnished, severely curtailing her access to the funds she needed to keep current with her financial obligations. Tr. at 7, 55; Indiv. Ex. G. The concern in this case is not a history of debt accrual that demonstrates that the individual is living beyond her means; the concern here is that the individual failed to resolve those debts until long after she was financially able to do so.

The individual's failure to file her annual tax returns is an additional form of derogatory information. The individual has consistently asserted that she has no opposition to paying taxes and has in fact had more than adequate funds withheld from her paychecks to cover her tax obligations. Tr. at 11. Nevertheless, the fact remains that she did not file returns for some 13 years, and eventually met her obligation only when faced with the onerous burden of a garnishment of her wages. Additional concerns regarding her honesty arise from contradictory statements she has made with respect to garnishment of wages and filing of tax returns.

Criterion L concerns that arise from financial irresponsibility generally call into question an individual's self-control, judgment, or willingness to abide by rules and regulations. See *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) at Guideline F; *Personnel Security Hearing, Case No. TSO-0264*, 29 DOE ¶ 83,023 (March 16, 2007). I find that the individual's personal conduct described above constitutes derogatory information that raises questions about the individual's honesty and reliability under Criterion L.

## **B. Mitigating Evidence**

A finding of derogatory information does not, however, end the evaluation of evidence concerning an individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0508)*, 29 DOE ¶ 83,091 (November 27, 2007) (and cases cited therein). In the end, like all Hearing Officers, I must exercise my common-sense judgment in deciding whether the individual's access authorization should be granted after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the individual has produced sufficient evidence of mitigation to resolve the security concerns raised by her financial irresponsibility.

### **1. The Individual's Reliability**

The evidence demonstrates that the amounts of the individual's debts that raised concerns for the LSO were quite low in comparison to her income. *Indiv. Ex. G*. The evidence also shows that these debts arose at the time her wages were garnished, as stated above, about seven years ago, and that she has not accrued additional indebtedness since that time. Furthermore, she testified at the hearing that, between the 2006 PSI and the hearing, she had repaid all of the debts that the LSO had brought to her attention, and has produced documentary proof that she has done so for most of those debts. *Indiv. Exs. D, E, F, G*. She attributed her failure to repay her debts sooner to procrastination. *Tr.* at 6, 7. She was busy as a single mother raising a child with disabilities and building a new house. *Id.* at 7, 15. She also testified that she now addresses all bills as they come to her attention. *Id.* at 56.

As for failing to file her income tax returns, her testimony was similar. Before her divorce, the individual's husband had filed their tax returns. *Id.* at 12. After the divorce, the individual had to learn how to file them, and her ex-husband's apparent lack of cooperation complicated a relatively simple process. *Id.* at 11-13. Having failed to file her return the first year she needed to file on her own, each successive year added to the confusion and complications. *Id.* She explained at the hearing that she had become bewildered by the process, and now claims that her tendency toward procrastination got the better of her. *Id.* She did not file her tax returns until the Internal Revenue Service garnished her wages in 2000. *Id.* at 13-14. At that time, she learned that the IRS had calculated her past taxes without the benefit of any exemptions or allowances, arrived at the amount of tax due for each unpaid year, and assessed interest and penalties on those amounts. *Id.* at 14; *Indiv. Ex. A*. The amount of her garnishment left her unable to pay her mortgage, let alone address other, smaller debts that began piling up. *Tr.* at 14-15. That crisis caused her to seek help and file her overdue tax returns. She testified that she will never let herself fall into that situation again, for two reasons. She explained that she learned through this experience that she could not claim refunds due her for any tax years more than three years in the past. *Id.* at 28. As a result, her inaction caused her to forfeit some \$20,000 of refunds that she might have received had she filed in a timely manner. *Id.* at 35. She also testified that, until the 2006 PSI, she believed she was not violating any tax law, because she had had income tax withheld from her wages, and knew that she would be entitled to refunds for the years in which she had not filed her returns. *Id.* at 12, 28-29. At the 2006 PSI, she testified, she was made to understand that she had an obligation not just to pay her taxes, but also to file an annual return. *DOE Ex. 3* at 23. At the time of the hearing, the individual was current regarding her filing of state and federal tax returns. *Tr.* at 37.

It is abundantly clear to me that the individual has taken great steps to resolve her financial obligations. Given her circumstances, particularly several years ago, I admire her courage and perseverance. A question regarding her reliability remains unresolved, however. Despite her assurances that she understands the legal requirement to file annual tax returns and will no longer procrastinate in handling her financial matters, two recent events demonstrate to me that she has not yet surmounted her tendency to procrastinate. First, the individual stated in her May 2006 response to the LOI that she would resolve all her debts, but stated at her September 2006 PSI that she had not yet done so, attributing her inaction to procrastination. *Id.* at 47, 56. Second, at the hearing, when it became evident that the individual had not produced documentary evidence to support her contention that she had in fact repaid a \$64 debt, she committed to producing that proof within 30 days after the hearing. *Id.* at 48-49. At the time I began drafting this decision, substantially more than 30 days after the hearing, I had not received that proof, and asked the individual if she intended to produce it. She assured me that she would, but I have not to this date received it nor any communication explaining the delay. My concern lies not with the uncertainty whether the debt was or was not repaid, but with the individual's lack of responsiveness and reliability. From the record before me, I find that the individual has not fully addressed her tendency to procrastinate, and that tendency may cause unreliability in the future.

## 2. The Individual's Honesty

At the hearing, the individual provided the following explanation to address why she had made contradictory statements about her currency with respect to filing state income tax returns. In her May 2006 response to the LOI, she wrote that she had "caught up with all of [her] back years" of both federal and state tax returns. DOE Ex. 4, Question 7. At the hearing, she explained that as of May 2006, she was current with her tax returns, because she had filed all of her delinquent federal tax returns and she understood that she was barred from filing state tax returns for earlier years for which she had not filed returns. Tr. at 37. She also explained that, between May and September 2006, when she participated in the PSI, the state had informed her that it had encountered a problem with her 2003 tax return, which she had not yet resolved. For that reason, she stated during her PSI that she was not current regarding her state tax returns. *Id.* at 39. The individual testified further that clearing up her tax obligations has been confusing for her throughout the process, and she never intended to mislead the LSO with the information she provided. *Id.* at 43.

Regarding the LSO's concern that she provided conflicting information about her 2000 garnishment, the individual testified at the hearing as follows. At the September 2006 PSI, the individual admitted that she had failed to acknowledge on her 2005 QNSP that she had been subject to a garnishment. See DOE Ex. 5, Question 27b. By way of explanation, the individual stated, "Well I guess I wasn't thinking. I've had to fill out these things so many times that I kinda, I'm sorry, I didn't mean to lie, that was not my intent at all." DOE Ex. 3 at 52. The interviewer herself admitted that the LSO would not have become aware of the garnishment if the individual had not discussed it in her response to the LOI, to which the individual responded, "Well I'm not, I'm not trying to hide anything." *Id.* at 53. At the hearing, the individual stated that she hurried through the portion of the QNSP that contained the "security questions," because none had ever applied to her, and checked off "no" responses to all of them, including the question about garnishment. Tr. at 8. She further explained, "I think of garnishment as a means of getting someone to pay a bill or accept a financial responsibility that they are unwilling to accept. Since I did not believe I had a financial obligation, I mentally did not think of the garnishment." *Id.* The record shows that the individual signed the QNSP twice, on two different

dates in 2005. *See* DOE Ex. 5. Assuming she reviewed the document both times before signing, she failed to notice her error twice. On the other hand, she failed to notice, during either review that she had listed her son as living with her, when in fact he had moved out years before. *See id.*, Question 14. She also testified that she had no recollection of signing or initialing the QNSP a second time. Tr. at 74.

The individual has presented plausible explanations for her contradictory statements regarding her state income tax returns and her garnishment. On the basis of the evidence before me and my assessment of her straightforward nature throughout this proceeding, I am convinced that she never intended to misrepresent the truth regarding her filing of tax returns or the existence of a garnishment. Nevertheless, I am not entirely convinced that the LSO can rely on the individual to recall and provide complete responses to questions it may have about her eligibility for access authorization in the future. She stated both during the September 2006 PSI and at the hearing that she was not aware until the PSI that she had an obligation to file tax returns even if she owed no taxes. The record, however, shows that that obligation was explained to her, and she acknowledged it during the 1993 PSI. DOE Ex. 6 at 12, 15, 17. Therefore, despite the individual's present favorable financial status and her heartfelt commitment to keep herself that way, it is my opinion that the individual has not mitigated the LSO's security concerns under Criterion L with respect to her honesty.<sup>2</sup>

## **VI. Conclusion**

As explained in this Decision, I find that the local DOE security office properly invoked 10 C.F.R. § 710.8 (l) in suspending the individual's access authorization. For the reasons described above, I find that the individual has not sufficiently mitigated those security concerns. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: February 11, 2008

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<sup>2</sup> One witness appeared on behalf of the individual. He has had a business relationship with the individual for at least ten years and has been her supervisor for much of that time. He testified that the individual is honest, reliable and trustworthy, and careful with paperwork in the work environment. *Id.* at 63-70. When asked specifically about her misrepresentation on the QNSP and her failure to file tax returns, the witness responded that such behavior was out of character for the individual, and must be attributed to misunderstanding in the first instance and procrastination in the second. *Id.* at 65, 70. I have considered this testimony and have accorded only neutral weight to it, as it is insufficient to overcome the security concerns associated with the individual's failure to take corrective action regarding her financial obligations.